



Urban Trees

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Delete/add Ministers as appropriate	Action sought:
To: Hon Phil Twyford, Associate Minister for the Environment	Noting only

Actions for Minister's Office Staff	No action required
Number of appendices and attachments # 1	Appendix 1: Tree protection in urban environments

Ministry for the Environment contacts

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Urban Trees

Purpose

1. You have requested information on urban tree protection under the Resource Management Act 1991 (RMA). This memo provides background to the removal of urban tree protection provisions in the RMA and details current work and future relevant work in the resource management reform (RM reform).

Background and Context

2. The ability for councils to use blanket urban tree protection rules was removed from the Resource Management Act through an amendment in 2009 and further clarified through a subsequent amendment in 2013.
3. These amendments were made to stop councils using broad ranging/blanket rules to protect trees in urban environments, due to the high transaction costs of the large number of resulting resource consents. The amendments, require councils to specifically identify the tree (or trees) and its location and or specific address in a schedule to the district plan. Appendix 1 provides further information on the background of urban tree protection.
4. Many concerns raised since the RMA amendments have come from the Auckland urban area. Mayor Goff, in a response to Minister Parker in April 2019, regarding the state of urban trees in Auckland, advised that a study of tree loss in the Waitemata local board area from 2006-2016 resulted in a total loss of 61.23 hectares of tree canopy. That tree loss was substantially on private land, making up 65% of total reported canopy loss, and that 75% of all cleared trees on private land had no statutory protection.
5. Concerns around urban tree protection generally cover the following matters:
 - a. Trees being removed for no obvious reason
 - b. A lack of clarity and ability to schedule trees
 - c. Loss of urban forest canopy.
6. When the 2013 RMA amendments were enacted, Auckland was developing the Auckland Unitary Plan (AUP). An important factor of developing the AUP was that the scheduled trees within the eight district plans were all carried over, therefore the protection of urban trees relied entirely on the accuracy of these schedules.
7. Auckland Council data shows that out of the overall tree stock in Auckland approximately 1% is protected by a schedule in the Auckland Unitary Plan. In the Auckland Council Planning Committee report on 3 April 2018, it acknowledges that approximately half of Auckland's urban trees have some degree of formal protection through regulatory techniques such as:
 - the scheduled trees and overlays for managing trees within specifically identified significant ecological areas
 - Trees in riparian and coastal areas
 - Street trees and trees within open space zones.


Current Ministry for the Environment work

8. A proposed National Policy Statement for Indigenous Biodiversity (NPSIB) was released in 2019 and noted the RMA's limitations on tree protection. The proposed NPSIB outlines the areas of significant flora and fauna that should be identified according to a set of criteria and mapped within council plans which may include individual trees or groups of trees in urban areas. The proposed NPSIB also includes provisions on general indigenous biodiversity management and targets for indigenous vegetation cover within urban environment. The urban environment definition is as per the National Policy Statement for Urban Development and therefore covers both the public and private domain.
9. The Resource Management Review Panel (the Panel) reviewed all parts of the existing Resource Management Act 1991 (RMA), including section 76 which relates to urban tree protection. The Panel did not make specific recommendations about urban tree protection but anticipated that this should be further investigated in the detailed policy development phase of the RM reform.

Next Steps

10. The RM reform exposure draft and current proposed drafting do not include provisions that restrict council's ability to protect urban trees. This change in policy setting alongside the proposed NPSIB, which is currently intended to be gazetted late 2021, will change councils' policy approach to tree protection.
11. The regulatory tools council have to manage urban trees is also likely to change once the National Planning Framework has been developed. This is because the National Planning Framework is likely to be more prescriptive regarding content that councils can use in their plans in relation to protection areas and development areas. It is something to be considered that urban trees could play a role within the broader question of urban design.
12. We consider that it is too early to be proposing any further work while the legislative drafting is progressing and tested by the users of the system. It is expected that urban tree protection will also be raised during the select committee process.

Signature

Lesley Baddon Director - Urban and Infrastructure Policy	
Date:	01/07/2021

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Appendix 1: Tree protection in urban environments



Tree protection in urban environments

This guidance is for practitioners involved with protecting trees in urban environments. It explains how sections 76(4A)–76(4D) of the Resource Management Act 1991 (RMA) should be applied and highlights some key considerations when using district plan rules to protect trees in urban allotments.

Introduction

The Government recognises both the value of trees in urban environments (eg, providing slope stability, biodiversity, amenity values, privacy, and shelter), as well as New Zealanders' interest in seeing significant trees and groups of trees protected. A range of voluntary and regulatory methods exist to protect trees in urban areas. Voluntary methods include education and encouragement. Regulatory methods include district rules in RMA plans, along with other methods, such as resource consent conditions and consent notices.

The changes to the RMA resulting from the Resource Management Amendment Act 2013 (RMAA13) are not designed to stop councils protecting trees in urban environments. However, the reforms reflect the Government's desire for a change in approach and it is therefore important that councils are clear about which trees are worthy of protection, and that landowners are clear about which trees on which allotments are protected under a district plan.

The scope of this guidance is limited to the tree scheduling requirements of sections 76(4A)–76(4D) of the RMA. Scheduling involves describing and specifically identifying individual trees or groups of trees in the district plan. While scheduling individual trees is common practice amongst councils, few have scheduled groups of trees. Therefore, this guidance focuses on the statutory requirements for scheduling 'groups of trees'.

Other regulatory and non-regulatory methods can be used to protect vegetation, including groups of trees. These are discussed in detail in a separate [guidance note about indigenous biodiversity](#) on the Quality Planning website. Those methods include:

- » [regulatory provisions](#)
- » [regulatory economic instruments](#)
- » [non-regulatory tools](#)
- » [non-regulatory economic instruments](#)
- » [options to protect vegetation on council land](#).

Background to tree protection under the RMA

Sections 76(4A) and 76(4B) of the RMA were inserted by the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (RMAA09). They came into force on 1 January 2012.

The intent was to reduce high transaction costs caused by the large number of resource consents required due to blanket tree protection rules in urban environments. The provisions intended to prohibit blanket tree protection rules except in areas within a reserve or an area subject to a conservation management plan or conservation management strategy. The provisions also required councils to specifically identify 'notable' trees for protection in a plan, either individually or as part of a definable group.

Shortly after the RMAA09 law change, several local authorities sought clarification from the Environment Court as to the lawfulness of the tree protection rules in their respective plans. In 2011, the Environment Court declared that, despite section 76(4A), councils could retain rules the Government considered amounted to a general tree protection approach (refer ENV-2010-AKL-241, NZEnvC 129). Central to the Environment Court's decision was how the words "group of trees" should be

interpreted. The Court considered that a group of trees can be any trees that satisfy one or more of the following conditions:

- a. a cluster or trees identified precisely by location (usually by street address and/or legal description)
- b. all trees of one or more named species in a defined area or zone
- c. all trees in a class with defined characteristics in a defined area or zone
- d. all trees in a named ecosystem (usually natural rather than artificial) or habitat or landscape (unit) or ecotone¹.

However, the Government considered that the conditions set out in 'b' and 'c' were at odds with the intention of the amendments under RMAA09 because they effectively legitimised a range of common approaches to blanket tree protection rules and allowed some councils to retain such rules. The combined effect of the Environment Court's decision and council responses to that decision created general confusion about whether trees were protected or not.

To address this, section 76(4A) was amended under the Resource Management Amendments Act 2013 (RMAA13) to align with its original policy intent – the prohibition of blanket tree protection rules in urban areas.

Sections 76(4A), (4B), (4C), and (4D) now state:

(4A) A rule may prohibit or restrict the felling, trimming, damaging, or removal of a tree or trees on a single urban environment allotment only if, in a schedule to the plan,—

- (a) the tree or trees are described; and*
- (b) the allotment is specifically identified by street address or legal description of the land, or both.*

(4B) A rule may prohibit or restrict the felling, trimming, damaging, or removal of trees on 2 or more urban environment allotments only if—

- (a) the allotments are adjacent to each other; and*
- (b) the trees on the allotments together form a group of trees; and*
- (c) in a schedule to the plan,—*
 - (i) the group of trees is described; and*
 - (ii) the allotments are specifically identified by street address or legal description of the land, or both.*

(4C) In subsections (4A) and (4B),—

group of trees means a cluster, grove, or line of trees

urban environment allotment or *allotment* means an allotment within the meaning of section 218—

- (a) that is no greater than 4000m²; and*
- (b) that is connected to a reticulated water supply system and a reticulated sewerage system; and*
- (c) on which there is a building used for industrial or commercial purposes or as a dwellinghouse; and*
- (d) that is not reserve (within the meaning of section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.*

(4D) To avoid doubt, subsections (4A) and (4B) apply—

- (a) regardless of whether the tree, trees, or group of trees is, or the allotment or allotments are, also identified on a map in the plan; and*
- (b) regardless of whether the allotment or allotments are also clad with bush or other vegetation.*

The new sections 76(4A)–76(4D) do not remove councils' ability to protect trees on urban allotments, do not place any restrictions on the types of trees to be protected, and do not limit the methods a council may use to assess the quality of a tree or group of trees. Rather, the sections require urban tree protection rules in district plans to be applied in ways that provide certainty for landowners and district plan users about what, if any, tree protection rules affect their properties.

This is achieved by requiring the trees to be protected to be described and the allotment or allotments specifically identified by street address and/or legal description in a schedule to the plan. Where a group of trees are to be protected, sections 76(4A)–76(4D) do not require every tree in a group to be individually described. Rather, the trees within that group can be described collectively, provided the description provides sufficient clarity to landowners and district plan users about which trees are part of that group and on which allotments they are located.

Because there are no definitions in the RMA of "trimming" and "damaging", councils may choose to include definitions in their district plans.

¹ The Oxford English Dictionary defines 'ecotone' as a: "transitional area between two or more distinct ecological communities".

Plan change process

The amendments to section 76 under the RMAA13 mean the following for councils:

1. Territorial authorities should review their district plan to ensure tree protection rules comply with the amendments to sections 76(4A)–76(4D). This includes existing vegetation clearance provisions.
2. Regional councils and unitary authorities should ensure their regional policy statements do not contain provisions inconsistent with sections 76(4A)–76(4D). For example, regional policy statements should not promote district plan methods to include rules that protect trees on urban environment allotments unless those trees are specifically described and identified in a schedule to the plan in accordance with sections 76(4A)–76(4D).

These reviews should be carried out and plan changes notified within two years from the commencement of part one of the RMAA13 – that is before 4 September 2015.

District rules to restrict the trimming, felling or removal of trees that are inconsistent with the new requirements in sections 76(4A)–76(4D) of the RMA will be revoked on 4 September 2015. If a rule to protect trees that would otherwise lose their protection (by virtue of blanket rules being revoked) is notified by this transitional date, it will have legal effect from 4 September 2015. This does not apply if the plan change is notified on or after that date. However, in such cases, councils will retain the ability to apply to the Environment Court for rules to have immediate legal effect under section 85D(2) of the RMA.

Including a schedule as part of a district or city plan or adding any tree(s) to an existing schedule will require a plan change. Where rules protect trees on urban allotments, councils need to demonstrate, through a section 32 evaluation, among other things, that other methods for protecting the trees have been considered and that the proposed rules are the most appropriate for achieving the relevant plan objective. The Ministry has produced an [interim guide to Section 32 of the RMA](#) as a result of changes made by the RMAA13.

The district plan schedule is not required to describe reasons why an individual tree is, or group of trees are, being protected. However, this information will be required when the plan change is formulated as part of the statutory tests under sections 32–32AA and sections 72–76 – that is, whether or not the scheduling method is the most appropriate way to achieve the district plan objectives. For example, the total number of trees or groups of trees to be scheduled in a plan is irrelevant under section 76(4B) but could be a key issue in determining whether or not scheduling a large number

of trees is more appropriate than other reasonably practicable tree protection mechanisms available, including non-regulatory methods.

A plan change that proposes to schedule one or more trees for protection should only be promulgated after:

- » encouraging ratepayers, community groups, and members of the public to nominate trees for protection
- » engaging environmental experts to identify what environmental outcomes are anticipated by protecting the subject trees
- » identifying and considering alternative mechanisms for achieving those environmental outcomes
- » consulting affected landowners
- » identifying the costs and benefits of the environmental, economic, social and cultural effects of protecting the subject.

Identifying and describing trees in urban environment allotments

Identifying trees on a single allotment

Section 76(4A) applies where all the trees to be protected are contained entirely within a single allotment. In this situation, trees to be protected may, but do not need to, form a “cluster, line or grove” on that allotment. This means that trees dispersed over a single allotment may be identified together. However, to comply with section 76(4A), any trees to be protected must be described in a schedule to the plan and the allotment must be identified by street address and/or legal description.

Identifying groups of trees on adjacent allotments

Section 76(4B) applies where the trees to be protected traverse adjacent allotments. This section is intended to apply to private properties with a contiguous area of trees. In this situation, the trees need to form a “group of trees”, meaning a cluster (which may be located within a broader bush or forest ecosystem), or a line or grove on adjacent allotments (eg, parallel to a driveway or public space, such as a road, footpath, park, stream corridor, or coastline).

The terms “cluster, line or grove” convey that a group of trees includes trees that:

- » are located in close geographic proximity to each other, although they are not required to overlap or touch
- » have an obvious level of visual connectedness to distinguish that group from other trees
- » may be the same or variable species.

A group of trees must not be dispersed, dissected, interrupted, or traversed by a road (including unformed roads) or an empty allotment (that is, an allotment with no notable trees that form part of that group).

Section 76(4B) contemplates that numerous groups of trees may be scheduled in a plan, even along the same street frontage. For example, in situations where trees within an area are to be protected but are dispersed, dissected, interrupted or traversed by a road or an empty allotment, several groups of trees may need to be scheduled separately.

The use of aerial photographs or geo-referencing (for example, global positioning system (GPS) or grid coordinates) **alone** does not satisfy the requirements for identifying a group of trees under section 76(4B). However, the use of geo-referencing or aerial photographs can be used in **conjunction** with the scheduling approach. For example, geo-referencing can be used to map the location of the protected trees in relation to property boundaries, which can provide further clarity to landowners and the public about the spatial extent of the tree protection.

Methods for protecting vegetation, including groups of trees

Describing a group of trees

Section 76(4B)(c)(i) requires that groups of trees are described in a schedule to a plan. It is not necessary to list each individual tree within a group; they can be described collectively. However, if a tree within a group is not adequately covered by the description, it will not be protected. Any collective description needs to provide sufficient clarity to the landowner and district plan users about which trees are part of that group.

As different groups of trees will have differing characteristics (such as species type, distance between trees, and name of group, eg, Rimu Grove), the level of detail needed for the purpose of satisfying section 76(4B)(c)(i) will vary on a case-by-case basis. Accordingly, the level of detail in the description of any group of trees should be tailored so the trees to be protected can be easily identified, particularly by landowners.

Factors which may be used as part of a description of a group of trees can include:

- » a list of the different tree species (common and scientific) being protected within the group
- » a visual characterisation of the trees to be protected within the group, including any size parameters – for example, to capture or exclude undergrowth and/or saplings
- » other matters that might be relevant, such as whether or not the trees include or exclude any planted or naturally occurring trees
- » if the trees are contained on more than one urban environment allotment, confirmation whether the trees are considered to be either a cluster, a grove, or a line.

Identifying allotments by street address and/or legal description

Sections 76(4A)(b) and 76(4B)(c)(ii) require that a schedule used to protect trees must identify the allotment(s) where the trees are located by street address and/or legal description of the land. Where a group of trees traverses adjacent urban allotments, those allotments may be identified in the schedule together (eg, 5–15 Queen Street), rather than separately (eg, 5 Queen Street, 7 Queen Street ... 15 Queen Street), as long as it is clear which properties that group of trees are located on.

If a tree is on a boundary between two urban allotments, this should be noted in the schedule as the tree would be 'located' on both properties. This does not apply where the branches of a tree located on one allotment overhang into a neighbouring allotment.

Protecting trees in urban environment allotments within areas of significant indigenous vegetation and significant habitats of indigenous fauna

The amendments to section 76 do not detract from the requirement of territorial authorities to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna pursuant to section 6(c) of the RMA, or detract from the functions of regional and district councils to maintain indigenous biological diversity pursuant to sections 30 and 31 respectively.

Sections 76(4A)–76(4D) do not prevent trees within an area of significant indigenous vegetation or a significant habitat of indigenous fauna from being protected by a rule in a district plan. In the unlikely event that an area of significant indigenous vegetation or a significant habitat of indigenous fauna to be protected is located on an urban environment allotment or allotments as defined by the RMA, sections 76(4A)–76(4D) will apply. These sections require the protection to be done in a certain way, via district rules that sufficiently identify and describe (either individually or collectively) the trees protected in the urban environment in a schedule to the plan.

Differentiating trees from other forms of vegetation

Numerous district plans and regional plans contain provisions relating to the protection of 'vegetation', including rules that restrict vegetation clearance. As trees are a type of vegetation, these rules could inadvertently promote or provide blanket tree protection. For example, any rule that restricts vegetation clearance in an urban zone is likely to be contrary to sections 76(4A)–76(4D) unless the trees are satisfactorily identified and described in a schedule to the plan. Therefore, territorial authorities should review their plans to ensure that any vegetation protection provisions in urban environments comply with the requirements of section 76(4A–4D).

Where existing vegetation protection provisions may amount to blanket tree protection, the plan should be amended to ensure the rules conform to the requirements of section 76(4A–4D). This could be achieved by amending the plan to:

- » exclude trees within urban environment allotments from the rules
- » identify and describe the trees to be protected in a schedule to the plan, in accordance with section 76(4A–4D).

Protecting trees in regional plans

Sections 76(4A)–76(4D) do not apply to regional plans. However, the ability for regional plan rules to protect trees is constrained by the statutory requirements for preparing those rules set out in sections 31–32 and sections 63–70 of the RMA.

Key terms and definitions

Cluster means a group of similar things or people positioned or occurring closely together.

Source: Oxford dictionary online

Group of trees means a cluster, grove, or line of trees.

Source: section 76(4C) of the RMA

Urban environment allotment means an allotment within the meaning of section 218—

- (a) that is no greater than 4000m²; and
- (b) that is connected to a reticulated water supply system and a reticulated sewerage system; and

- (c) on which there is a building used for industrial or commercial purposes or as a dwellinghouse; and
- (d) that is not reserve (within the meaning of section 2(1) of the Reserves Act 1977) or subject to a conservation management plan or conservation management strategy prepared in accordance with the Conservation Act 1987 or the Reserves Act 1977.

Source: section 76(4C) of the RMA

Grove means a small wood or other group of trees.

Source: Oxford dictionary online

*Tree*² means a woody perennial plant, typically having a single stem or trunk growing to a considerable height and bearing lateral branches at some distance from the ground.

Source: Defined by the Environment Court having regard to the Shorter Oxford English Dictionary, 6th Edition, OUP

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² In the absence of any definition in the RMA itself, a district plan may contain its own definition of trees, which, in those cases, would prevail over this definition.